

NTSB Order No. EA-5141

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 7th day of February, 2005

MARION C. BLAKEY
Administrator,
Federal Aviation Administration,

Complainant,

v.

BRYAN D. TUTT,

Respondent.

Docket SE-16578

Respondent appeals the written initial decision of Administrative Law Judge William A. Pope, II, issued in this proceeding on March 12, 2003.¹ By that decision, the law judge upheld the Administrator's allegation that respondent violated sections 43.13(a), 43.13(b) and 65.81(b) of the Federal Aviation Regulations (FARs) and affirmed a 30-day suspension of the

¹ The law judge's initial decision is attached.

airframe rating of respondent's mechanic certificate.² We deny respondent's appeal.

Respondent is an FAA-certified mechanic with airframe and

² FAR sections 43.13, 14 C.F.R. Part 43, and 65.81, 14 C.F.R. Part 65, provide, in relevant part, as follows:

Sec. 43.13 Performance rules (general).

(a) Each person performing maintenance, alteration, or preventive maintenance on an aircraft, engine, propeller, or appliance shall use the methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness prepared by its manufacturer, or other methods, techniques, and practices acceptable to the Administrator, except as noted in Sec. 43.16. He shall use the tools, equipment, and test apparatus necessary to assure completion of the work in accordance with accepted industry practices. If special equipment or test apparatus is recommended by the manufacturer involved, he must use that equipment or apparatus or its equivalent acceptable to the Administrator.

(b) Each person maintaining or altering, or performing preventive maintenance, shall do that work in such a manner and use materials of such a quality, that the condition of the aircraft, airframe, aircraft engine, propeller, or appliance worked on will be at least equal to its original or properly altered condition (with regard to aerodynamic function, structural strength, resistance to vibration and deterioration, and other qualities affecting airworthiness).

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Sec. 65.81 General privileges and limitations.

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(b) A certificated mechanic may not exercise the privileges of his certificate and rating unless he understands the current instructions of the manufacturer, and the maintenance manuals, for the specific operation concerned.

powerplant ratings, and owner of Aircraft Services, a maintenance facility at Standiford International Airport in Louisville, Kentucky. On August 14, 1999, pursuant to a contractual arrangement between Comair and Aircraft Services, respondent was tasked by a maintenance controller at Comair to respond to an aircraft discrepancy noted by the crew of Comair Flight 5092 that air conditioning pack louvers were "loose." Respondent attempted to fix the problem and returned the aircraft to service by making the following entry in the aircraft's maintenance log:

"Resecured BDT louver rivets per [Bombardier's Canadair CL600-2B19 Structural Repair Manual ("SRM")] 51-00-00, 51-42-06."

Thereafter, Comair Flight 5092 flew in revenue passenger service to Greater Cincinnati/Northern Kentucky International Airport, and, upon landing, the flight crew again noted that the louvers were loose. Respondent did not have substantive knowledge of the SRM provisions he cited. In fact, he did not, as specified in the SRM, "use only a rivet-squeezer to install rivets in composite materials," but, rather, he used a pneumatic rivet gun.

The law judge's written decision provides a thorough overview of the facts, and clearly articulates the basis for his conclusion that the Administrator proved her charges by a preponderance of the evidence. After a review of the record, including the hearing transcript and the briefs submitted on appeal, we adopt it as our own.

Indeed, on appeal, respondent primarily argues that, although he did not follow the SRM and did not use a rivet

squeezer as specified in the SRM for composite material, his repairs were nonetheless proper.³ This argument is clearly contrary to the clear and persuasive testimony of the FAA Principal Maintenance Inspector for Comair, Charles Messina, who was accepted by the law judge as an expert witness regarding Comair maintenance procedures and the manuals required to be used. Inspector Messina testified that as a Part 121 air carrier, Comair is required to complete repairs in accordance with FAA-approved manuals (including, in this instance, the SRM and, specifically, the SRM paragraphs referenced by the Comair maintenance controller and cited by respondent in the aircraft logbook entry). See Hearing Transcript ("Tr.") at 165-169. Two other witnesses, Jared Purnell, the Comair maintenance controller, and Charles Chrest, Comair Director of Quality Control, corroborated Inspector Messina's opinion that the only FAA-approved procedure for repairing the loose louver rivets was contained in the SRM. Respondent's arguments to the contrary, including his reliance on general maintenance guidance contained in FAA Advisory Circular 41.13-1B, are unpersuasive in the face

³ Respondent's argument that there was insufficient evidence that his repair was ineffectual is both unconvincing and irrelevant. It is irrelevant because it does not address the Administrator's charges, with the exception, perhaps, of the FAR section 43.13(b) charge, and, in any event, it is unconvincing as to all charges because, notwithstanding respondent's bare assertions, this record provides ample basis to conclude that respondent's repairs were not adequate. The same flight crew that reported the aircraft discrepancy that respondent attempted to address in Louisville logged the same discrepancy upon landing in Cincinnati, and Inspector Messina testified to the damage he observed on the rivet heads caused by respondent's use of a pneumatic gun instead of a rivet squeezer.

of this evidence.⁴ Respondent does not demonstrate any error in the law judge's decision.⁵

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The law judge's decision, upholding most of the Administrator's order of suspension, is affirmed; and

⁴ Respondent's ancillary arguments that suggest the SRM did not apply to the circumstance at issue are neither germane nor persuasive. For example, respondent's argument regarding proof about whether Textar, the manufacturer of the duct and louver assembly, had FAA Parts Manufacturer Approval ("PMA") authorization ignores the clear testimony of Inspector Messina. See Tr. at 173-174, 181, 218-219. In the face of this evidence, it was respondent's burden to present evidence that Textar did, in fact, possess FAA PMA authorization, but he did not do so.

⁵ Respondent's procedural argument that the law judge committed prejudicial error in allowing the Administrator to "reopen" her case at the beginning of the second day of the hearing, after inadvertently resting at the conclusion of the previous day before several exhibits were admitted is also not persuasive. The law judge permitted this to occur before respondent began his case in defense, for the purpose of permitting the Administrator the opportunity to offer a sponsoring witness for the Comair maintenance records, in light of respondent's "technical" challenge to their authenticity after it became clear that logistical limitations would not permit previously-contemplated telephone testimony of the sponsoring witness. A "law judge has considerable discretion in the conduct of the hearing and, absent a showing of harm to respondent from the law judge's admission of this material, we see no grounds to question the law judge's exercise of that discretion here." Administrator v. Renner, NTSB Order No. EA-3927 at 4-5 (1993).

3. The 30-day suspension⁶ of the airframe rating of respondent's mechanic certificate shall begin 30 days after the service date indicated on this opinion and order.⁷

ENGLEMAN CONNERS, Chairman, ROSENKER, Vice Chairman, and CARMODY, HEALING, and HERSMAN, Members of the Board, concurred in the above opinion and order.

⁶ Respondent offers no support for his claim that the 30-day suspension of the airframe rating of his mechanic certificate is "grossly harsh." Indeed, as the law judge noted, suspension of both airframe and powerplant ratings for 30 days would be consistent with precedent. And the Administrator's choice of sanction here is consistent with her Sanction Guidance Table, which was admitted as an exhibit and argued at the hearing. We have no basis to disturb the sanction imposed by the Administrator.

⁷ For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. 61.19(g).